

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Schools and Libraries	)	CC Docket No. 02-6
Universal Service Support Mechanism	)	
	)	
Request for Review and/or Waiver by	)	
the Robstown Independent School District	)	Application No. 295855
of Funding Decisions by the	)	
Universal Service Administrative Company	)	

**REQUEST FOR REVIEW AND/OR WAIVER  
BY THE ROBSTOWN INDEPENDENT SCHOOL DISTRICT  
OF FUNDING DECISIONS BY THE  
UNIVERSAL SERVICE ADMINISTRATIVE COMPANY**

Pursuant to sections 54.719 and 54.722 of the Commission's rules,<sup>1</sup> the Robstown (Texas) Independent School District<sup>2</sup> (Robstown ISD or the District) hereby respectfully requests a review of a Universal Service Administrative Company (USAC) decision to recover E-rate funds disbursed in Funding Year 2002.<sup>3</sup> USAC denied Robstown ISD's appeal of its RIDFs and recovery efforts on the ground that Robstown ISD had not shown that USAC's determination was incorrect.<sup>4</sup> In fact, Robstown ISD showed in its appeal that USAC's determination *was* incorrect in that it relied on rules that did not exist in 2002. Robstown ISD also showed that USAC's attempt to recover funds so long after disbursement violated Robstown ISD's due process rights and was inconsistent with the Commission's stated goal that

---

<sup>1</sup> 47 C.F.R. § 54.719(b), (c); 47 C.F.R. § 54.722(a).

<sup>2</sup> Billed Entity Number 141604.

<sup>3</sup> Exhibit 1, Recovery of Improperly Disbursed Funds letters dated November 13, 2018. The FCC Form 471 number is 295855. The FRNs are 829114 and 829185.

<sup>4</sup> Exhibit 2, USAC Denial of Robstown ISD's Appeal, Mar. 14, 2019, at 1.

investigations and recovery efforts be completed within five years. For these reasons, and because USAC's recovery efforts are contrary to Wireline Competition Bureau directives issued in 2009. Robstown ISD respectfully requests that the Bureau grant its request for review of USAC's decision.

In the alternative, Robstown ISD requests a waiver of the Commission's rules to the extent necessary to grant the requested relief. It is contrary to public policy and does not advance the goals of the E-rate program to recover funds more than 15 years after they were disbursed in the absence of waste, fraud, or abuse.

## **Table of Contents**

I.	BACKGROUND .....	4
II.	USAC’S REASONS FOR DENIAL ARE CONTRARY TO COMMISSION PRECEDENT AND THE RULES THAT WERE IN EFFECT IN FUNDING YEAR 2002 .....	6
A.	USAC’s Recovery Effort Relies on Commission Rules That Did Not Exist in Funding Year 2002.....	6
B.	Seeking Recovery of Funds This Long After They Were Disbursed Violates Robstown ISD’s Due Process Rights.....	8
C.	USAC’s Recovery Efforts Violate the Commission’s Five-Year Investigation Policy...	9
III.	IN THE ALTERNATIVE, THE BUREAU SHOULD WAIVE THE COMMISSION’S RULES TO GRANT THE REQUESTED RELIEF .....	12
IV.	CONCLUSION.....	15

## **I. BACKGROUND**

Robstown Independent School District is located in the city of Robstown, Texas.

Robstown ISD serves a traditional high school, an alternative high school campus, a junior high, a 4th & 5th grade campus, and three K- 3rd elementary schools. The district has approximately 450 employees and more than 2,750 students. More than 88 percent of the students in Robstown ISD are economically disadvantaged, and 97.3 percent are Hispanic/Latino.

On November 13, 2018, USAC sent Robstown ISD two recovery of improperly disbursed funds letters (RIDFs) seeking recovery of approximately \$93,000 in funding from Funding Year 2002. USAC cited the following as its reasons for seeking recovery:

During an Audit, the auditors determined the equipment for which you requested discounts in your funding request was not utilized in accordance with program rules. . . . Therefore, funds were improperly disbursed on this funding request. FCC rules require that applicants have secured all the necessary resources to make effective use of the equipment and that the equipment is utilized for an educational purpose. During the auditors['] site visit, equipment that was purchased with E-rate funds, was not installed. The UPS equipment was located in the selected schools or the applicants warehouse in the original packaging. An asset list was provided by the applicant and some of the equipment purchased under this FRN was not located. Since the audit revealed that equipment was not utilized according to program rules, USAC must seek recovery of all funds improperly disbursed that are associated with the equipment not being utilized. . . .

Additionally, the auditors determined equipment purchased with the E-Rate discounts for FY 2002, . . . could not be located. . . . Therefore, funds were improperly disbursed for this funding request. FCC rules require that the equipment purchased with program discounts be located at an eligible entity and be utilized effectively for educational purposes. The rules require that applicants retain asset and inventory records of equipment purchased and components of supported Internal Connections services sufficient to verify the location of such equipment. Since equipment purchased with Universal Service funds could not be located, the above FCC rules were violated.<sup>5</sup>

---

<sup>5</sup> Exhibit 1. This reason was given in each of the RIDF letters for Funding Year 2002 covered by this appeal.

Attached to the RIDFs was an audit report dated April 3, 2006.<sup>6</sup> That report, prepared by KPMG, included findings of uninstalled or missing equipment purchased with E-rate funds.<sup>7</sup> As a result, KPMG concluded that improper payments had been made to Robstown ISD.<sup>8</sup> USAC's RIDFs cited these audit findings, and attached the final version of the audit. Robstown ISD had no record of receiving the audit prior to receiving the RIDFs.

On January 11, 2019, Robstown ISD filed a timely appeal of the RIDFs. In its appeal, Robstown ISD argued that USAC had violated its due process rights, that USAC and KPMG had relied on rules that were not in effect in Funding Year 2002, and that USAC had violated the federal five-year statute of limitations on recovery actions.<sup>9</sup>

USAC denied Robstown ISD's appeal on March 14, 2019, stating the following as its reasons for denial:

During the appeal review of your FCC Form 471 #295855 you requested reversal of the . . . decision to seek recovery of improperly disbursed funds. It was determined that during an Audit, the auditors determined the equipment that was purchased with E-rate funds, was not installed. Since the audit revealed that equipment was not utilized according to program rules, USAC must seek recovery of all funds improperly disbursed that are associated with the equipment not being utilized. In your appeal, you did not show that USAC's determination was incorrect. Consequently, your appeal is denied.<sup>10</sup>

Appeals to the Commission of USAC decisions are due within 60 days.<sup>11</sup> As such, this appeal is timely filed.

---

<sup>6</sup> Exhibit 3, KPMG Audit.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Exhibit 2, USAC Denial of Robstown ISD's Appeal, Mar. 14, 2019, at 1.

<sup>11</sup> 47 C.F.R. § 54.720(a). Although USAC's denial letter was dated March 14, it was not postmarked until March 25, so Robstown ISD did not receive the denial until March 28. Despite USAC's 11-day delay in mailing the denial, Robstown ISD is filing the instant appeal within 60 days of the date on the letter, consistent with the Commission's rules. See Exhibit 2, USAC Denial of Robstown ISD's Appeal.

## **II. USAC’S REASONS FOR DENIAL ARE CONTRARY TO COMMISSION PRECEDENT AND THE RULES THAT WERE IN EFFECT IN FUNDING YEAR 2002**

Robstown ISD respectfully asks the Bureau to grant this appeal because the KPMG audit that USAC relied on as the basis for its recovery action applied rules to Funding Year 2002 that had not yet been adopted by the Commission. Furthermore, USAC’s decision to recover funds disbursed more than 15 years ago violated Robstown ISD’s due process rights, because the passage of time and turnover in District E-rate personnel made it impossible for Robstown ISD to mount a vigorous defense. Finally, USAC’s recovery action violates the Commission’s stated preference that E-rate investigations be completed within five years.

### **A. USAC’s Recovery Effort Relies on Commission Rules That Did Not Exist in Funding Year 2002**

In Funding Year 2002, there was no requirement that school districts use or keep equipment purchased with E-rate funds for a certain length of time. The Commission’s rule that districts had to keep the equipment in the same location for three years became effective in March 2004.<sup>12</sup> Given that the audit did not take place until two years after the relevant funding year *ended*, the audit could not determine what happened to the equipment earlier; all it could determine was that the equipment was not located where it was supposed to be in Funding Year 2002. It was not a requirement that it still be in the same place two years after the funding year ended. In short, by applying 2005 rules to Funding Year 2002, USAC found rule violations where none existed.<sup>13</sup> Contrary to USAC’s decision and the conclusion in the KPMG audit,

---

<sup>12</sup> 47 C.F.R. § 54.513(c); 69 FR 6191, Feb. 10, 2004.

<sup>13</sup> The RIDFs stated that “[FCC] rules require that applicants retain asset and inventory records of equipment purchased and components of supported Internal Connections services sufficient to verify the location of such equipment.” Exhibit 1, Recovery of Improperly Disbursed Funds letters dated Nov. 13, 2018, at 4. In Funding Year 2002, there was no requirement that applicants keep an asset inventory list detailing the location of every piece of equipment. The Commission did not adopt detailed record-

therefore, the fact that auditors could not locate some of the equipment purchased with 2002 funding does not warrant recovery.

USAC's decision to seek recovery of funds on the basis of uninstalled equipment was also inconsistent with guidance that the Bureau provided to USAC in January 2009 regarding equipment that was not being used. The Bureau advised USAC that

USAC recommended recovery in every instance in which equipment was not utilized: for example, the equipment was installed but not connected to any computers, or some equipment was still in its original packaging and had not been installed. There could be situations that would justify a decision to not recover funds. For example, in one of the audits, Brownsville Independent School District delayed installation of all equipment due to human resource limitations, but anticipated that very shortly all of the equipment would be installed. In this instance, if the equipment was subsequently installed, recovery would not be warranted.<sup>14</sup>

Thus, the Bureau made clear in this formal guidance that recovery based on uninstalled equipment should not be automatic, but rather should depend on the individual circumstances. But USAC did not analyze the individual circumstances; it merely decided that recovery was necessary because KPMG found that some equipment had not been installed, even though Robstown ISD informed KPMG that installation of the remaining equipment was in progress. In fact, Robstown ISD's circumstances may be similar to the circumstances described by the Bureau where recovery was not warranted. Because USAC failed to follow the Bureau's guidance on uninstalled equipment, its decision should be reversed.

---

keeping requirements until 2004. *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Fifth Report and Order, 19 FCC Rcd 15808, 15824 ¶ 48 (2004) (*Fifth Report and Order*).

<sup>14</sup> Letter from Dana R. Shaffer, Chief, Wireline Competition Bureau, to Scott Barash, Acting Chief Executive Officer, USAC, DA 09-86, at 2 (Jan. 16, 2009).

**B. Seeking Recovery of Funds This Long After They Were Disbursed Violates Robstown ISD's Due Process Rights**

USAC is seeking to recover funding that was committed and disbursed more than 15 years ago. This length of time between funding year and RIDF is well beyond the recordkeeping requirements applicable to Funding Year 2002. The document retention requirement in the E-rate program has an unambiguous history. The Commission established a five-year recordkeeping requirement in 2004, and extended it to ten years in 2014.<sup>15</sup> Prior to 2004, however, the rules did not specify how long applicants had to keep records relating to E-rate-supported services.<sup>16</sup>

Accordingly, there is no justification for expecting Robstown ISD to have retained any documents from Funding Year 2002 for any particular length of time, and certainly not for 16 years. But by issuing these RIDFs so long after the funding year in question, in effect USAC is imposing that expectation on Robstown ISD; otherwise, how can Robstown ISD be expected to exercise its right of appeal in any meaningful way? Any relevant documentation in Robstown ISD's possession is long gone, as are the Robstown ISD personnel who handled E-rate in Funding Year 2002. USAC's unexplained delay in seeking recovery of these funds—again, almost 13 years after the completion of the KPMG audit—thus violates Robstown ISD's due process rights.<sup>17</sup>

---

<sup>15</sup> *Fifth Report and Order*, 19 FCC Rcd 15808, 15823-24 ¶ 47; *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870, 8974-75 ¶ 262 (2014) (*First Modernization Order*).

<sup>16</sup> *Fifth Report and Order*, 19 FCC Rcd at 15823 ¶ 45.

<sup>17</sup> KPMG noted that at least some of the allegedly improperly disbursed funds were due to the service provider billing USAC for installation and configuration services that were never performed, but it is unclear whether recovery was directed at the service provider for those amounts. In addition, it is possible that some of the “missing” equipment could be due to the failure of the service provider to provide and install it but there is no indication as to whether that was investigated by the auditors.



In effect, USAC exceeded its authority by issuing these RIDFs. The Commission has certainly stressed the importance of the document retention requirement for ensuring compliance with the E-rate rules and guarding against waste, fraud, and abuse.<sup>18</sup> But as we have explained, there were no document retention requirements in place in Funding Year 2002, and even the current rule does not require applicants to retain documents for more than 15 years. Nothing in the Commission’s rules or orders gives USAC the authority to impose this expectation on applicants.

**C. USAC’s Recovery Efforts Violate the Commission’s Five-Year Investigation Policy**

Robstown ISD recognizes that over the past two years, the Commission has declined to recognize any formal temporal limitation on recovery actions by USAC. In the *Net56 Order*, the Commission determined that the five-year investigation period it had previously established in the *Fifth Report and Order* is a “policy preference” and “not an absolute bar to recovery.”<sup>19</sup> More recently, in its *Blanca Order*, the Commission rejected an argument that the Supreme Court’s decision in *Kokesh v. SEC* imposed the general federal five-year statute of limitations in 28 U.S.C. § 2462 on USAC recovery actions.<sup>20</sup> But even taking these Commission orders into account, USAC must still respect the Commission’s unequivocal preference for concluding

---

<sup>18</sup> *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870, 8974 ¶ 261 (2014) (*First Modernization Order*).

<sup>19</sup> *Application for Review of a Decision of the Wireline Competition Bureau by Net56, Inc., Palatine, Illinois*, CC Docket No. 02-6, Memorandum Opinion and Order, 32 FCC Rcd 963, 966 ¶ 9 (2017).

<sup>20</sup> *Blanca Telephone Company Seeking Relief from the June 22, 2016 Letter Issued by the Office of the Managing Director Demanding Repayment of a Universal Service Fund Debt Pursuant to the Debt Collection Improvement Act*, CC Docket No. 96-45, Memorandum Opinion and Order and Order on Reconsideration, 32 FCC Rcd 10594, 10611-12 ¶¶ 44-45 (2017) (*Blanca Order*).

investigations within five years. By seeking to recover funds 13 years after KPMG’s audit concluded, USAC has violated that preference, and its decision must therefore be reversed.

Respect for the Commission’s policy preference is particularly important where, as is the case here, the facts can be distinguished from the *Blanca Order*. The statute of limitations applies to the “enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise.”<sup>21</sup> In *Kokesh v. SEC*, the Court found that the SEC’s disgorgement action constituted a “penalty” under the statute because a penalty addresses a wrong against the public, not an individual, and is sought for the purpose of punishment and deterrence, not just compensation of a victim.<sup>22</sup> In *Blanca*, the Commission determined that the federal five-year statute of limitations provision was not applicable to Blanca because the recovery at issue was not a penalty but “merely recovers for the USF a windfall to which Blanca was not entitled.”<sup>23</sup> But here, USAC’s recovery effort can only be characterized as a penalty. Unlike Blanca, Robstown ISD received no “windfall”: USAC disbursed funds that paid for E-rate eligible services that Robstown ISD used to provide educational opportunities for its students, all in furtherance of the E-rate program’s statutory goals, and Robstown ISD paid its share for the services purchased. Accordingly, the only purpose for recovery here would be to punish the school district and deter future violations by E-rate participants, which means that the statutory limitation should apply.

Furthermore, the Commission has recognized that there are important policy reasons to limit its review period. In its *Fifth Report and Order*, the Commission established a policy that “USAC and the Commission shall carry out any audit or investigation that may lead to discovery

---

<sup>21</sup> 28 U.S.C. § 2462.

<sup>22</sup> *Kokesh v. SEC*, 137 S. Ct. 1635, 1642 (2017).

<sup>23</sup> *Blanca Order*, 32 FCC Rcd at 10612 ¶ 45.

of any violation of the statute or a rule within five years of the final delivery of service for a specific funding year.”<sup>24</sup> In adopting that policy, the Commission recognized that “conducting inquiries within five years strikes an appropriate balance between preserving the Commission’s fiduciary duty to protect the fund against waste, fraud and abuse *and the beneficiaries’ needs for certainty and closure in their E-rate application processes.*”<sup>25</sup> The *Net56 Order* clarified that the five-year period in the *Fifth Report and Order* was a policy preference rather than a hard deadline, but at the same time it reiterated the policy considerations described in the *Fifth Report and Order*, stressing that the Commission “continue[s] to believe that the best course is for USAC to aim to complete its investigations and seek recovery of funds within five years, whenever possible” and directing USAC “to incorporate that as an objective in its annual performance metrics plan.”<sup>26</sup>

The Supreme Court has also explained on numerous occasions why statutes of limitations are so important as a matter of policy. In *Kokesh*, the Court explained that statutes of limitations “are ‘vital to the welfare of society’ and rest on the principle that ‘even wrongdoers are entitled to assume that their sins may be forgotten.’”<sup>27</sup> The Court has gone so far as to point out that “[i]n a country where *not even treason* can be prosecuted, after a lapse of three years, it could scarcely be supposed, that an individual would remain forever liable to a pecuniary forfeiture.”<sup>28</sup>

Even if no formal statute of limitations applies to E-rate recovery actions, the policy concerns that the Commission recognized in the *Fifth Report and Order* and the *Net56 Order*,

---

<sup>24</sup> 47 U.S.C. § 254(b)(6).

<sup>25</sup> *Fifth Report and Order*, 19 FCC Rcd at 15819 ¶ 33 (emphasis added).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *3M v. Browner*, 17 F.3d at 1457 (1994) (quoting *Adams v. Woods*, 6 U.S. (2 Cranch) 336, 341, 2 L.Ed. 297 (1805) (Marshall, C.J.)) (emphasis added).

and that the Supreme Court described in *Kokesh* and elsewhere, are no less applicable. As a matter of good policy and essential fairness, USAC should be far more hesitant than it is to rescind funding committed more than 15 years ago. If USAC insists on making decisions such as this one, and the Bureau affirms them, E-rate applicants will *never* experience the “certainty and closure” that the Commission has directed USAC to prioritize, and the Commission’s longstanding policy preference for concluding universal service funding investigations within five years is rendered meaningless.

The lapse of time between investigation and recovery is especially egregious in this case. The audit of Robstown ISD’s Funding Year 2002 E-rate compliance was completed in April 2006. Robstown ISD had no reason to expect that USAC would suddenly demand repayment after doing nothing for almost 13 years. And USAC has provided no reason as to why it could not have sought recovery of funding in a timely fashion once the KPMG audit was completed.

If USAC’s actions do not violate the letter of the Commission’s orders regarding the timely completion of investigations and recovery actions, they certainly violate the spirit. Robstown ISD therefore respectfully asks that the Bureau reverse USAC’s decision.

### **III. IN THE ALTERNATIVE, THE BUREAU SHOULD WAIVE THE COMMISSION’S RULES TO GRANT THE REQUESTED RELIEF**

As explained above, Robstown ISD did not violate the Commission’s rules that were in effect in Funding Year 2002. If the Bureau disagrees, however, Robstown ISD respectfully asks the Bureau to waive the Commission’s rules to the extent necessary to grant the requested relief.

Any of the Commission’s rules may be waived if good cause is shown.<sup>29</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict

---

<sup>29</sup> 47 C.F.R. § 1.3.

compliance inconsistent with the public interest.<sup>30</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>31</sup>

A waiver in this case would be in the public interest. Granting the requested waiver also advances the goals of the E-rate Program. As explained above, it was nearly impossible for Robstown ISD to defend itself robustly against the alleged rule violations. Robstown ISD's records from Funding Year 2002 are long gone,<sup>32</sup> and the superintendent and technology director who managed E-rate at Robstown ISD during the funding year covered by this appeal are no longer with the school district. (The current technology director, Richard Gonzalez, joined Robstown ISD in 2012. Dr. Maria Vidaurri was superintendent from 2012 until 2018; the current superintendent is Dr. José Moreno.) Current Robstown ISD personnel cannot answer questions about equipment purchased in Funding Year 2002. They do not know whether there was additional communication with USAC after the KPMG audit was completed. They do not know whether the equipment was installed after the audit; if it was, the Commission has directed USAC not to recover funds in such circumstances. USAC should not be able to evade Commission directives by simply waiting until the applicant no longer has the information

---

<sup>30</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>31</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

<sup>32</sup> In January 2019 and again in April 2019, Robstown ISD requested any files USAC had in its possession. Robstown ISD received the requested files from USAC on the afternoon of May 13, the same day the instant appeal was due. Because it did not have time to incorporate those documents into this appeal before filing, Robstown ISD will supplement the record.

available to address USAC's allegations. The only record Robstown ISD has of the KPMG audit is the audit report itself and would not even have that if USAC had not attached it to the RIDFs. It is inconsistent with the public interest to force an applicant to try to defend itself against allegations of rule violations under these circumstances.

Furthermore, there was no harm to the program. Even if Robstown ISD were to concede that it may not have executed the equipment installation flawlessly back in 2002—which it does not concede, having no idea what happened for the reasons we have explained—it would still argue that the program was not harmed. Certainly, there was not harm sufficient to justify recovering funds more than 15 years after they were disbursed. For all of these reasons, it is in the public interest for the Bureau to grant the requested waiver.

#### IV. CONCLUSION

For the reasons discussed above, Robstown ISD respectfully asks the Bureau to grant this appeal, or in the alternative to waive the Commission's rules to the extent necessary to grant the requested relief.

Respectfully submitted,


/s/ Gina Spade

---

Gina Spade  
Broadband Legal Strategies  
1629 K Street, NW Suite 300  
Washington, DC 20006  
gina@broadbandlegal.com  
202-907-6252

*Counsel for Robstown ISD*

May 13, 2019



---

Dr. José H. Moreno, Superintendent  
Robstown Independent School District  
801 North 1st Street  
Robstown, TX 78380  
jose.moreno@robstownisd.org  
361-767-6600, Ext. 2005

### **CERTIFICATE OF SERVICE**

This is to certify that on this 13<sup>th</sup> day of May, 2019, a true and correct copy of the foregoing Request for Review was sent via email to the Schools and Libraries Division, Universal Service Administrative Company at the Appeals@USAC.org address.

/s/ Theresa Schrader

---

Theresa Schrader



### **Attachments**

- Exhibit 1      Recovery of Improperly Distributed Funding Letters, Nov. 13, 2018
- Exhibit 2      USAC Denial of Robstown ISD's Appeal, Mar. 14, 2019
- Exhibit 3      KPMG Audit

## **EXHIBIT 1**



## Recovery of Improperly Disbursed Funds Letter

Maria Vidaurri  
ROBSTOWN INDEP SCHOOL DISTRICT  
801 N 1ST ST  
ROBSTOWN, TX 78380

11/13/2018

Our review of your Schools and Libraries Universal Service Support Program (or E-rate) funding request has determined funds were committed in violation of Federal Communications Commission (FCC) rules. You have 60 days from the date of this letter to appeal the following decision(s). For more detailed information see below.

**Total amount to be recovered: \$47,067.75**

<i>FCC Form 471</i>	<i>FRN</i>	<i>Commitment adjustment</i>	<i>Total amount to be recovered</i>	<i>Explanation(s)</i>	<i>Party to recover from</i>
295855	829114	\$0.00	\$47,067.75	Could not locate equipment; Equipment not utilized	Applicant

*See Attached Adjustment Report for more information on the specific FRNs and Explanations listed above.*

### Recovery of Improperly Disbursed Funds

Our review of your Universal Service Schools and Libraries Support Program (or E-rate) funding request(s) referenced in the Adjustment Report has determined funds were improperly disbursed in violation of Federal Communications Commission (FCC) rules. A copy of that Adjustment Report is also attached to this letter.



## Universal Service Administrative Co.

FCC rules require the Universal Service Administrative Company (USAC) to rescind commitments and recover funding when it is determined that funding was committed and disbursed in violation of the rules. This letter notifies you that USAC will be adjusting your funding commitment(s) and provides information on how to appeal this decision.

This is NOT a bill. If disbursed funds need to be recovered, USAC will issue a Demand Payment Letter. The debt referenced in the Demand Payment Letter will be due within 30 days of that letter's date. Failure to pay the debt may result in interest, late payment fees, and administrative charges and will invoke the FCC's "Red Light Rule."

### FCC's Red Light Rule

The FCC Red Light Rule requires USAC to dismiss pending FCC Form 471 applications, appeals, and invoices or to net disbursements offsetting the debt if the entity responsible for paying the outstanding debt owed to the FCC has not paid the debt or made satisfactory arrangements to pay the debt within 30 days of the Demand Payment Letter. For information on the Red Light Rule, see

<https://www.fcc.gov/licensing-databases/fees/debt-collection-improvement-act-implementation>

### To Appeal This Decision

If you wish to contest any part of this letter, you must first file an appeal with USAC to seek review of the decision. Parties that have filed an appeal with USAC and received an adverse decision may, if they choose, appeal USAC's decision to the FCC. Parties seeking a waiver of a codified FCC rule should file a request for waiver directly with the FCC because USAC cannot waive FCC rules. Your appeal to USAC or waiver request to the FCC must be filed within 60 days of the date of this letter.

All appeals filed with USAC must be filed in EPC by selecting "Appeal" from the menu in the top right hand corner of your landing page and providing the requested information.

Your appeal should include the following information. (Because you file the appeal through your EPC account, the system will automatically fill in some of these components for you).

- 1) Name, address, telephone number, and email address for the contact person for this appeal.
- 2) Indicate specifically that your letter is an appeal. Include the following to identify the USAC decision letter (e.g., Recovery of Improperly Disbursed Funds) and the decision you are appealing:



**Universal Service  
Administrative Co.**

- a. Appellant name;
- b. Applicant name and service provider name, if different from appellant;
- c. Applicant BEN and Service Provider Identification Number (SPIN);
- d. FCC Form 471 Application Number and the Funding Request Number (FRN) or Numbers as assigned by USAC;
- e. "Recovery of Improperly Disbursed Funds," AND the exact text or the decision that you are appealing.

3) Identify the problem and the reason for the appeal and explain precisely the relief sought. Please keep your appeal to the point, and provide supporting documentation. Be sure to keep a copy of your entire appeal, including any correspondence and documentation. A copy will automatically be saved for you in EPC. USAC will reply to your appeal submission to confirm receipt.

For more information on submitting an appeal to USAC including step by step instructions on how to file the appeal through EPC, please see "Appeals" in the Schools and Libraries section of the USAC website.

As mentioned, parties seeking a waiver of FCC rules or that have filed an appeal with USAC and received a decision may file a request for waiver or appeal USAC's decision to the FCC. Waiver requests or appeals to the FCC must be made within 60 days of the issuance of USAC's decision and include all of the information referenced above for appeals to USAC.

The FCC recommends filing appeals or waiver requests with the Electronic Comment Filing System (ECFS) to ensure timely filing. Electronic waiver requests or appeals will be considered filed on a business day if they are received at any time before 11:59 PM ET. If you have questions or comments about using the ECFS, please contact the FCC directly at (202) 418-0193.

For more information about submitting waiver requests or appeals to the FCC, including options to submit the waiver request or appeal via U.S. mail or hand delivery, visit the FCC's website.

Schools and Libraries Division

cc: Cathi Whelan  
Insight Public Sector Inc



**Universal Service  
Administrative Co.**

## Adjustment Report

FCC Form 471 Application Number: 295855  
Funding Request Number: 829114  
Commitment Adjustment: \$0.00  
Total Amount to Be Recovered: \$47,067.75  
Explanation(s): Could not locate equipment; Equipment not utilized

Party to Recover From: Applicant  
Funding Year: 2002  
Billed Entity Number: 141604  
Services Ordered: INTERNAL CONNECTIONS  
Service Provider Name: Insight Public Sector Inc  
SPIN: 143030052  
Original Funding Commitment: \$619,655.58  
Adjusted Funding Commitment: \$619,655.58  
Funds Disbursed to Date: \$619,655.58

## Funding Commitment Adjustment Explanation

### Finding 2

During an Audit, the auditors determined the equipment for which you requested discounts in your funding request was not utilized in accordance with program rules. See enclosed audit report for details. Therefore, funds were improperly disbursed on this funding request. FCC rules require that applicants have secured all the necessary resources to make effective use of the equipment and that the equipment is utilized for an educational purpose. During the auditors site visit, equipment that was purchased with E-rate funds, was not installed. The UPS equipment was located in the selected schools or the applicants warehouse in the original packaging. An asset list was provided by the applicant and some of the equipment purchased under this FRN was not located. Since the audit revealed that equipment was not utilized according to program rules, USAC must seek recovery of all funds improperly disbursed that are associated with the equipment not being utilized. USAC is seeking recovery of \$20,051.75 which was improperly disbursed from the applicant.

### Finding 3

Additionally, the auditors determined equipment purchased with the E-Rate discounts for FY 2002, FRN 829114, could not be located. See enclosed audit report for details. Therefore, funds were improperly disbursed for this funding request. FCC rules require that the equipment purchased with program discounts be located at an eligible entity and be utilized effectively for educational purposes. The rules require that applicants retain asset and inventory records of equipment purchased and components of supported Internal Connections ser



**Universal Service  
Administrative Co.**

vices sufficient to verify the location of such equipment. Since equipment purchased with Universal Service funds could not be located, the above FCC rules were violated. Accordingly, USAC will seek recovery of \$27,016.00 of improperly disbursed funds from the applicant.  
Total recovery amount is \$47,067.75

Maria Vidaurri  
ROBSTOWN INDEP SCHOOL DISTRICT  
801 N 1ST ST  
ROBSTOWN, TX 78380





Universal Service  
Administrative Co.

## Recovery of Improperly Disbursed Funds Letter

Maria Vidaurri  
ROBSTOWN INDEP SCHOOL DISTRICT  
801 N 1ST ST  
ROBSTOWN, TX 78380

11/13/2018

Our review of your Schools and Libraries Universal Service Support Program (or E-rate) funding request has determined funds were committed in violation of Federal Communications Commission (FCC) rules. You have 60 days from the date of this letter to appeal the following decision(s). For more detailed information see below.

**Total amount to be recovered: \$46,834.75**

<i>FCC Form 471</i>	<i>FRN</i>	<i>Commitment adjustment</i>	<i>Total amount to be recovered</i>	<i>Explanation(s)</i>	<i>Party to recover from</i>
295855	829185	\$0.00	\$46,834.75	Equipment not utilized	Applicant

*See Attached Adjustment Report for more information on the specific FRNs and Explanations listed above.*

### Recovery of Improperly Disbursed Funds

Our review of your Universal Service Schools and Libraries Support Program (or E-rate) funding request(s) referenced in the Adjustment Report has determined funds were improperly disbursed in violation of Federal Communications Commission (FCC) rules. A copy of that Adjustment Report is also attached to this letter.



## Universal Service Administrative Co.

FCC rules require the Universal Service Administrative Company (USAC) to rescind commitments and recover funding when it is determined that funding was committed and disbursed in violation of the rules. This letter notifies you that USAC will be adjusting your funding commitment(s) and provides information on how to appeal this decision.

This is NOT a bill. If disbursed funds need to be recovered, USAC will issue a Demand Payment Letter. The debt referenced in the Demand Payment Letter will be due within 30 days of that letter's date. Failure to pay the debt may result in interest, late payment fees, and administrative charges and will invoke the FCC's "Red Light Rule."

### FCC's Red Light Rule

The FCC Red Light Rule requires USAC to dismiss pending FCC Form 471 applications, appeals, and invoices or to net disbursements offsetting the debt if the entity responsible for paying the outstanding debt owed to the FCC has not paid the debt or made satisfactory arrangements to pay the debt within 30 days of the Demand Payment Letter. For information on the Red Light Rule, see

<https://www.fcc.gov/licensing-databases/fees/debt-collection-improvement-act-implementation>

### To Appeal This Decision

If you wish to contest any part of this letter, you must first file an appeal with USAC to seek review of the decision. Parties that have filed an appeal with USAC and received an adverse decision may, if they choose, appeal USAC's decision to the FCC. Parties seeking a waiver of a codified FCC rule should file a request for waiver directly with the FCC because USAC cannot waive FCC rules. Your appeal to USAC or waiver request to the FCC must be filed within 60 days of the date of this letter.

All appeals filed with USAC must be filed in EPC by selecting "Appeal" from the menu in the top right hand corner of your landing page and providing the requested information.

Your appeal should include the following information. (Because you file the appeal through your EPC account, the system will automatically fill in some of these components for you).

- 1) Name, address, telephone number, and email address for the contact person for this appeal.
- 2) Indicate specifically that your letter is an appeal. Include the following to identify the USAC decision letter (e.g., Recovery of Improperly Disbursed Funds) and the decision you are appealing:



**Universal Service  
Administrative Co.**

- a. Appellant name;
- b. Applicant name and service provider name, if different from appellant;
- c. Applicant BEN and Service Provider Identification Number (SPIN);
- d. FCC Form 471 Application Number and the Funding Request Number (FRN) or Numbers as assigned by USAC;
- e. "Recovery of Improperly Disbursed Funds," AND the exact text or the decision that you are appealing.

3) Identify the problem and the reason for the appeal and explain precisely the relief sought. Please keep your appeal to the point, and provide supporting documentation. Be sure to keep a copy of your entire appeal, including any correspondence and documentation. A copy will automatically be saved for you in EPC. USAC will reply to your appeal submission to confirm receipt.

For more information on submitting an appeal to USAC including step by step instructions on how to file the appeal through EPC, please see "Appeals" in the Schools and Libraries section of the USAC website.

As mentioned, parties seeking a waiver of FCC rules or that have filed an appeal with USAC and received a decision may file a request for waiver or appeal USAC's decision to the FCC. Waiver requests or appeals to the FCC must be made within 60 days of the issuance of USAC's decision and include all of the information referenced above for appeals to USAC.

The FCC recommends filing appeals or waiver requests with the Electronic Comment Filing System (ECFS) to ensure timely filing. Electronic waiver requests or appeals will be considered filed on a business day if they are received at any time before 11:59 PM ET. If you have questions or comments about using the ECFS, please contact the FCC directly at (202) 418-0193.

For more information about submitting waiver requests or appeals to the FCC, including options to submit the waiver request or appeal via U.S. mail or hand delivery, visit the FCC's website.

Schools and Libraries Division

cc: Cathi Whelan  
Insight Public Sector Inc



**Universal Service  
Administrative Co.**

## Adjustment Report

FCC Form 471 Application Number:	295855
Funding Request Number:	829185
Commitment Adjustment:	\$0.00
Total Amount to Be Recovered:	\$46,834.75
Explanation(s):	Equipment not utilized
Party to Recover From:	Applicant
Funding Year:	2002
Billed Entity Number:	141604
Services Ordered:	INTERNAL CONNECTIONS
Service Provider Name:	Insight Public Sector Inc
SPIN:	143030052
Original Funding Commitment:	\$285,090.30
Adjusted Funding Commitment:	\$285,090.30
Funds Disbursed to Date:	\$281,433.42

### Funding Commitment Adjustment Explanation

#### Finding 2

During an Audit, the auditors determined the equipment for which you requested discounts in your funding request was not utilized in accordance with program rules. See enclosed audit report for details. Therefore, funds were improperly disbursed on this funding request. FCC rules require that applicants have secured all the necessary resources to make effective use of the equipment and that the equipment is utilized for an educational purpose. During the auditors site visit, equipment that was purchased with E-rate funds, was not installed. The UPS equipment was located in the selected schools or the applicants warehouse in the original packaging. An asset list was provided by the applicant and some of the equipment purchased under this FRN was not located. Since the audit revealed that equipment was not utilized according to program rules, USAC must seek recovery of all funds improperly disbursed that are associated with the equipment not being utilized. USAC is seeking recovery of \$20,051.75 which was improperly disbursed.

#### Finding 3

Additionally, the auditors determined equipment purchased with the E-Rate discounts for FY 2002, FRN 829185, could not be located. See enclosed audit report for details. Therefore, funds were improperly disbursed for this funding request. FCC rules require that the equipment purchased with program discounts be located at an eligible entity and be utilized effectively for educational purposes. The rules require that applicants retain asset and inventory records of equipment purchased and components of supported Internal Connections services sufficient t



**Universal Service  
Administrative Co.**

o verify the location of such equipment. Since equipment purchased with Universal Service funds could not be located, the above FCC rules were violated. Accordingly, USAC will seek recovery of \$26,783.00 of improperly disbursed funds from the applicant.

Total recovery amount is \$46,834.75.

Maria Vidaurri  
ROBSTOWN INDEP SCHOOL DISTRICT  
801 N 1ST ST  
ROBSTOWN, TX 78380



## **EXHIBIT 2**

Gina Spade  
Broadband Legal Stratgies  
1629 K Street, NM Suite 300  
Washington, DC 20006

Billed Entity Number: 141604  
Form 471 Application Number: 295855  
Form 486 Application Number: 196725





---

**Administrator's Decision on Appeal - Funding Year 2002**

3/14/19

Gina Spade  
Broadband Legal Strategies  
1629 K Street, NM Suite 300  
Washington, DC 20006

Re:    Applicant Name:                      Robstown Indep School District  
      Billed Entity Number:                141604  
      Form 471 Application Number:        295855  
      Funding Request Number(s):        829114, 829185  
      Your Correspondence Dated:        1/11/2019

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Funding Year 2002 for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision. If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 829114, 829185

Decision on Appeal:                      Deined

Explanation:

- During the appeal review of your FCC Form 471 #295855 you requested reversal of the COMAD decision to seek recovery of improperly disbursed funds. It was determined that during an Audit, the auditors determined the equipment that was purchased with E-rate funds, was not installed. Since the audit revealed that equipment was not utilized according to program rules, USAC must seek recovery of all funds improperly disbursed that are associated with the equipment not being utilized. In your appeal, you did not show that USAC's determination was incorrect. Consequently, your appeal is denied.

Since your appeal was denied in full, dismissed or cancelled, you may file an appeal with the FCC. Your appeal must be postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. You should refer to CC



Docket No. 02-6 on the first page of your appeal to the FCC. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found under the Reference Area/"Appeals" of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience, and cooperation during the appeal process.

Schools and Libraries Division  
Universal Service Administrative Company

CC: Cathi Whelan  
Insight Public Sector Inc  
6820 S. Harl Avenue  
Tempe, AZ 85283-4318

### **EXHIBIT 3**



KPMG LLP  
1660 International Drive  
McLean, VA 22102

April 3, 2006

---

Mr. D. Scott Barash, Acting Chief Executive Officer  
Mr. Wayne Scott, Vice President – Internal Audit Division  
Universal Service Administrative Company  
2000 L Street, N.W., Suite 200  
Washington, DC 20036

Mr. William A. Hill, Jr., Assistant Inspector General for USF Oversight  
Office of Inspector General  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

---

KPMG LLP is pleased to submit this performance audit relative to Robstown Independent School District, Beneficiary No. 141604 ("Beneficiary"), for Funding Year ("FY") 2002, in accordance with our contract with Universal Service Administrative Company ("USAC"). USAC engaged us to perform a series of performance audits for FYs 2002 and 2003 to meet the objectives identified in the Objectives and Scope section of this report.

We conducted our audit from May 9, 2005 through April 3, 2006 in accordance with *Government Auditing Standards (2003 Revision)* issued by the Comptroller General of the United States. The purpose of this report is to communicate the results of our efforts. As such, we have captured in the Conclusion; Audit Findings; Other Matters; and Beneficiary and SLD Responses section of this report a detailed discussion of the audit findings and other matters identified during this performance audit, along with responses to our audit findings and other matters from the USAC Schools and Libraries Division and the Beneficiary, with which we shared the results of our audit.

Since April 3, 2006, we have not performed any additional audit procedures with respect to this report and have no obligation to update this report or to revise the information contained therein to reflect events occurring subsequent to April 3, 2006.

**KPMG LLP**

## Executive Summary

We were engaged by Universal Service Administrative Company (“USAC”) to conduct performance audits for Funding Years (“FY”) 2002 and 2003. The objectives of our audits were: (1) to provide an independent assessment of selected beneficiaries’ compliance with the regulations governing the *Schools and Libraries Universal Service Support Mechanism* (“SLSM” or “E-Rate”), set forth in 47 C.F.R. Part 54, and certain USAC implementing procedures which were established consistent with 47 C.F.R. Part 54 and other existing laws or regulations (collectively, “the Rules”); (2) to identify selected beneficiaries’ noncompliance, if any, with certain other USAC implementing procedures related to the SLSM; (3) to identify other beneficiary-specific or SLSM-related conditions that we believe warrant the selected beneficiaries’ or USAC’s attention in an effort to provide greater E-Rate program effectiveness or consistency among beneficiaries; and (4) to identify improper payments made from the Universal Service Fund related to the selected beneficiaries for the years under audit.

### Scope of Audit

This report relates to the performance audit conducted relative to Robstown Independent School District, Beneficiary No. 141604 (“Beneficiary”), for FY 2002. The Beneficiary is located in Robstown, Texas. This performance audit was conducted in accordance with *Government Auditing Standards (2003 Revision)*.

We collaborated with USAC and the Federal Communications Commission Office of Inspector General to develop our basic work plan, and included other procedures when determined necessary to meet the engagement objectives. The scope of this engagement included, but was not limited to, reviewing the Beneficiary’s processes for program application, service provider selection and contracting, and program cost reimbursement.

For FY 2002, amounts totaling \$1,669,815 were disbursed by SLSM on behalf of the Beneficiary under 13 Funding Request Numbers (“FRN”). Those FRNs included amounts for telecommunication services, Internet access and internal connections.



### **Summary of Testwork**

We performed audit procedures on a Beneficiary-wide level related to the application process for participation in the E-Rate program. Those procedures included reading the Beneficiary's audited financial statements, other financial information associated with the E-Rate Program (i.e., other audit reports, budget data, etc.) and technology plan for FY 2002, and evaluating the Beneficiary's calculations of E-Rate discount percentages for which it applied. Our audit was conducted during the period of May 9, 2005 through April 3, 2006.

We selected six FRNs, representing 82% of the total amounts disbursed by SLSM for the Beneficiary related to FY 2002, and performed audit procedures related to the Beneficiary's service provider selection and contracting and program cost reimbursement processes. To test the Beneficiary's reimbursement process, we selected 11 reimbursement forms from the selected FRNs, which represented 71% of the disbursed amount under the selected FRNs. Further, we performed site visits at five of the Beneficiary's nine schools. We determined that the selected schools currently had Internet access and telephone service, which were services also funded for FY 2002 under selected Beneficiary-wide FRNs.

### **Summary of Results**

Based on the audit procedures performed and for the transactions tested, we conclude that the Beneficiary was not compliant with the Rules identified above for FY 2002, and we identified improper payments totaling \$128,252. In addition, the results of our audit procedures disclosed three audit findings and five beneficiary-specific other matters, which are reported herein.

## Background

Universal Service Administrative Company (“USAC”) is an independent not-for-profit corporation that operates under the direction of the Federal Communications Commission (“FCC”) pursuant to 47 C.F.R. Part 54. The purpose of USAC is to administer the Universal Service Fund (“USF”), which was created by The Telecommunications Act of 1996 to ensure that consumers in all regions of the United States have access to quality telecommunications and information services at affordable rates. The USF is comprised of four support mechanisms to ensure that its objectives are met. USAC has engaged KPMG to perform a series of performance audits for Funding Years (“FY”) 2002 and 2003, including the performance audit to which this report relates.

The USAC Schools and Libraries Division (“SLD”) administers the *Schools and Libraries Universal Service Support Mechanism*, (“SLSM”) which makes advanced telecommunications affordable for the nation’s schools and libraries. Also known as “E-Rate”, this mechanism provides discounts on the cost of telecommunication services, Internet access and internal connections, with the highest discounts going to entities serving the most disadvantaged sections of the population. In both FYs 2002 and 2003, over 100,000 schools and libraries were funded by the USF.

Robstown Independent School District, Beneficiary No. 141604 (“Beneficiary”, “the District” or “Robstown ISD”), the subject of this audit, is comprised of nine schools, and serves approximately 4,000 students. The Beneficiary is located in Robstown, Texas. For FY 2002, SLD received requests for \$2,354,574 for telecommunication services, Internet access and internal connections from the Beneficiary, and committed and disbursed \$2,096,475 and \$1,669,815 respectively, as summarized in Table 1 below:

**TABLE 1: FY 2002 Dollars Requested, Committed and Disbursed**

Service Category	Requested			Committed			Disbursed		
	# FRNs	Dollars	%	# FRNs	Dollars	%	# FRNs	Dollars	%
Telecommunications	3	\$ 70,355	3.0%	3	\$ 70,355	3.4%	3	\$ 70,355	4.2%
Internet Access	1	6,437	0.3%	1	6,437	0.3%	1	6,374	0.4%
Internal Connections	12	2,277,782	96.7%	10	2,019,683	96.3%	9	1,593,086	95.4%
Totals	16	\$ 2,354,574	100.0%	14	\$ 2,096,475	100.0%	13	\$ 1,669,815	100.0%

## Objectives and Scope

The performance audit was conducted in accordance with *Government Auditing Standards (2003 Revision)*.

---

The workplan was developed in coordination with USAC and the Federal Communications Commission Office of Inspector General (“FCC OIG”). The objectives of the performance audit were:

- (1) to provide an independent assessment of selected beneficiaries’ compliance with the regulations governing the *Schools and Libraries Universal Service Support Mechanism* (“SLSM” or “E-Rate”), set forth in 47 C.F.R. Part 54, and certain USAC implementing procedures which were established consistent with 47 C.F.R. Part 54 and other existing laws or regulations (collectively, “the Rules”);
- (2) to identify selected beneficiaries’ noncompliance, if any, with certain other USAC implementing procedures related to the SLSM;
- (3) to identify other beneficiary-specific or SLSM-related conditions that we believe warrant the selected beneficiaries’ or USAC’s attention in an effort to provide greater E-Rate program effectiveness or consistency among beneficiaries; and
- (4) to identify improper payments made from the Universal Service Fund related to the selected beneficiaries for the years under audit.

For purposes of this report, the following definitions are provided:

<b>Audit finding</b>	a condition that, in our judgment, evidences non-compliance with the Rules
<b>Other matter</b>	a condition that, in our judgment, evidences non-compliance with USAC implementing procedures not considered in the definition of the Rules or is a condition we believe warrants the Beneficiary’s or USAC’s attention, in an effort to provide greater E-Rate program effectiveness or consistency among beneficiaries
<b>Improper payment</b>	a reimbursement made that, in our judgment, was not in accordance with the Rules



Following is the timeline and phases for this performance audit:

- |                       |                              |
|-----------------------|------------------------------|
| • Planning            | May 9 – May 13, 2005         |
| • Fieldwork           | May 16 – 27, 2005            |
| ◦ Entrance Conference | May 16, 2005                 |
| ◦ Exit Conference     | June 9, 2005                 |
| • Wrap-Up / Reporting | June 7, 2005 – April 3, 2006 |

Throughout the fieldwork phase, status updates were provided to the Beneficiary, allowing timely discussions and follow-up on potential audit findings and other matters. Upon completion of fieldwork, an exit conference was held with the Beneficiary to discuss the results of the audit and the beneficiary response process. Beneficiary responses are included in the “Conclusion; Audit Findings; Other Matters; and Beneficiary and SLD Responses” section of this report.

We performed the audit procedures described in this report primarily at the Beneficiary’s location and by using information provided to us by USAC and the Beneficiary in advance of our visit to the Beneficiary. As part of the scope of our performance audit, we obtained an understanding of the specific internal controls relevant to the E-Rate program. Because of inherent limitations, a study and evaluation made for the limited purpose of the performance audit would not necessarily disclose all material weaknesses in the internal control structure. Further, this performance audit was not designed to, and does not include a conclusion or opinion on the Beneficiary’s internal control processes.

The performance audit procedures were classified in the following categories: General Procedures; Application Process; Service Provider Selection and Contracting Process; and Reimbursement Process. Following is a summary of the audit procedures performed:

### **General Procedures**

General procedures are those audit procedures that address matters that are not related to any of the identified processes, or those that may have related to all of the identified processes.

### *FRN Selection for Testing*

We judgmentally selected six Funding Request Numbers (“FRN”) related to the Beneficiary for FY 2002. An FRN is the tracking number assigned by SLD to an E-Rate application for funding. The number of FRNs selected was determined based on the time planned to conduct the performance audit, while attempting to achieve the following two objectives: (1) select at least one FRN from each service category for which disbursement was made from USF funds and (2) select enough FRNs to achieve at least 25% coverage of total dollars disbursed, with a bias toward FRNs related to internal connections, the service category for which we have evaluated the risk of non-compliance to be the highest. Table 2 below includes a summary of the amounts disbursed by SLSM related to the Beneficiary for FY 2002 in total and under the selected FRNs:

**TABLE 2: FY 2002 Disbursed Dollars in Total and Selected for Testing**

Service Category	# FRNs	Total Disbursed Dollars	% of Total Disbursed Dollars by Category	# FRNs	Disbursed Dollars for Selected FRNs	% of Total Disbursed Dollars Selected
Telecommunications	3	\$ 70,355	4.2%	1	\$ 56,700	80.6%
Internet Access	1	6,374	0.4%	1	6,374	100.0%
Internal Connections	9	1,593,086	95.4%	4	1,297,374	81.4%
<b>Totals</b>	<b>13</b>	<b>\$ 1,669,815</b>	<b>100.0%</b>	<b>6</b>	<b>\$ 1,360,448</b>	<b>81.5%</b>

### *Review of Other Audit Reports*

We read the Beneficiary’s Office of Management and Budget (“OMB”) Circular A-133 audit report for the fiscal year including FY 2002 to identify any findings that may have impacted the Beneficiary’s compliance with the Rules, and to determine if the Beneficiary had taken corrective action relative to such findings. No such matters were identified in the Beneficiary’s OMB Circular A-133 audit reports for the fiscal years ended August 31, 2002 and 2003.

We also inquired of USAC and FCC OIG as to whether any other audits or investigations of the Beneficiary, relative to the E-Rate program, had been, or were being, conducted by their respective audit staffs. No such audits or investigations were identified.

## **Application Process**

### *Introduction*

---

To participate in the E-Rate program, a potential beneficiary must meet certain eligibility requirements. For purposes of this audit, we considered the Beneficiary's financial position, compliance with the Rules related to the Beneficiary's technology plan, and the calculation of the Beneficiary's discount percentage upon application to USAC.

### *Summary of Audit Procedures*

We made inquiries of Beneficiary personnel and examined the Beneficiary's audited financial statements, for the fiscal years relevant to FY 2002, to determine if the Beneficiary had endowments exceeding \$50 million, which would have rendered it ineligible for discounts under the E-Rate program.

---

We obtained and read the Beneficiary's Technology Plan for FY 2002 and determined whether it was properly and timely approved and included the core elements of successful school and library technology initiatives as identified by USAC.

We examined documentation supporting the Beneficiary's E-Rate discount percentage calculation. To validate the accuracy of the discount percentage, we recalculated the discount percentage in accordance with the eligibility rules for the E-Rate program.

We determined, by reference to the Beneficiary's fiscal year budgets, or other proof of funding, whether the Beneficiary had all of the necessary funding budgeted / available and approved to pay for its non-discounted portion for the requested products and services for FY 2002.

We examined documentation provided by the Beneficiary to determine whether a staff training program, designed to instruct teachers how to incorporate those goods and services into educational instruction, was in place at the time of application for E-Rate funding.

We determined through inquiry of Beneficiary personnel and observation during our site visits (see "Reimbursement Process – Summary of Audit Procedures" below) whether the Beneficiary had the appropriate hardware and software infrastructure to utilize the goods and services for which E-Rate funding was requested.

By examination of E-Rate related documents provided by both USAC and the Beneficiary, we determined whether the Beneficiary indicated compliance with certain requirements of the Children's Internet Protection Act ("CIPA") for FY 2002. Further, we gained an understanding of the Beneficiary's Internet Safety Policy, and the process by which the Beneficiary communicates and administers that policy. During site visits to a selection of the Beneficiary's schools (see "Reimbursement Process" below), we tested certain computers to validate the existence of the Beneficiary's technology protection measure (i.e., filter).

### ***Summary of Audit Findings and Other Matters***

When performing the application process audit procedures, we identified one audit finding related to the Beneficiary not meeting the requirement to have an approved technology budget prior to filing an FCC Form 470 for FY 2002, which is reported as Audit Finding No. 141604-F-2002-01 herein.

## **Service Provider Selection and Contracting Process**

### ***Introduction***

The service provider selection and contracting process includes the procurement process and competitive bidding process, when applicable, by which the Beneficiary selected its E-Rate service providers and established its related contracts for eligible goods and/or services. The audit procedures addressed the Beneficiary's procurement process and the eligibility of goods and services procured using E-Rate funds.

### ***Summary of Audit Procedures***

From the six selected FRNs, we selected 11 of the related reimbursement forms, representing 71% of the amount disbursed for the selected FRNs, for use in performing the audit procedures related to the service provider selection and contracting and reimbursement processes. The number of reimbursement forms selected was determined based on the time planned to conduct the performance audit, while attempting to achieve the following three objectives: (1) select a minimum number of reimbursement forms, determined as the lesser of five (5) reimbursement forms or 100% of the reimbursement forms filed related to the selected FRNs; (2) select at least one of each type of reimbursement form submitted; and (3) select enough reimbursement forms to achieve at least 50% coverage of total dollars disbursed under the selected FRNs, with a bias toward selecting reimbursement forms related to internal connections where we have evaluated

the risk of non-compliance to be the highest of the service categories. See Appendix 1 for identification of the selected FRNs and reimbursement forms.

We obtained an understanding of the Beneficiary's service provider selection and contracting process, including the related competitive bidding activities, through discussions with Beneficiary personnel and review of documentation provided by the Beneficiary. We used this information to determine if the design of that process was consistent with the Rules. For the service providers associated with the selected FRNs, we determined whether the Beneficiary followed its service provider selection process procedures, including those for competitive bidding (as applicable), and properly completed and utilized FCC Forms 470 (Services Requested and Certification Form) and 471 (Services Ordered and Certification Form). We also inquired as to what, if any, assistance the Beneficiary received relative to completion of the FCC Forms and selection of the winning bidders. Further, we determined whether the selected service providers had properly completed FCC Form 473 (Service Provider Annual Certification) for FY 2002.

For each product or service acquired under the selected FRNs, we obtained the service provider bills and related contracts, when applicable. The products and/or services identified on such bills and contracts were compared to the FY 2002 Eligible Services List ("ESL") published by SLD to determine if those products or services were appropriate for E-Rate discount under the Rules. The selected products and/or services identified on the service provider bills and contracts, for which discounts were sought, were also compared to the Beneficiary's FCC Form 470 to determine consistency of products and/or services described therein.

#### *Summary of Audit Findings and Other Matters*

We identified no audit findings or other matters in performance of the service provider selection and contracting process audit procedures to be reported herein.

## **Reimbursement Process**

### *Introduction*

---

The reimbursement process encompasses the Beneficiary's procedures for processing and paying invoices for allowable program disbursements, the Beneficiary and service providers' requests for reimbursement from SLSM, and the receipt of reimbursed discounted amounts by the Beneficiary from the service providers, in cases where the Beneficiary had paid such amounts to the service providers prior to disbursement by SLSM. The audit procedures for this process addressed each of the foregoing and included site visits to selected schools to determine if the goods and/or services, for which disbursement was made by SLSM, were in place and operational at the time of our visit.

### *Summary of Audit Procedures*

---

We obtained an understanding of the Beneficiary's cash disbursement process, including invoice review and approval requirements, from discussion with, and documentation provided by, Beneficiary personnel to determine if the design of that process included safeguards to prevent violations of the Rules. For the selected reimbursement forms (identified in Appendix 1), we determined whether the related service provider bills (either in their entirety or for the beneficiary portion only) were paid in accordance with the Beneficiary's cash disbursement process and that the costs for the products and/or services appeared reasonable. If the service provider bills included any substitute products or services, we compared those items to the FY 2002 ESL and to the substitution authorization issued by SLD.

We obtained the selected reimbursement forms prepared by the Beneficiary (FCC Form 472 – Billed Entity Applicant Reimbursement ("BEAR")) or by the service providers (FCC Form 474 – Service Provider Invoice ("SPI")). The discount percentages claimed on those reimbursement forms were compared to those approved by USAC in the Funding Commitment Decision Letters issued to the Beneficiary and verified whether it was applied appropriately. For service provider bills related to the selected reimbursement forms that included products, we compared the information on the service provider bills (including make, model and serial number, where applicable) to the Beneficiary's asset/inventory records to verify inclusion of these items in the Beneficiary's property records.

For selected reimbursements for which SPI forms were submitted by the service providers, we compared the related bills to the SPI forms to determine whether the service provider sought reimbursement for the appropriate amount from SLSM and whether total billed costs (to SLSM and to the Beneficiary) were less than or equal to the total cost of the eligible products and/or services authorized under the FRN.

For selected reimbursements for which the Beneficiary submitted BEAR forms, we compared the related bills to the BEAR forms to determine whether the Beneficiary sought reimbursement for the appropriate amount from SLSM and whether the BEAR form was dated subsequent to the date that the service provider bill was paid by the Beneficiary. We also determined whether the service provider paid the Beneficiary in a timely manner after USAC paid the service provider for the selected BEAR form reimbursements, and we examined evidence of deposit of proceeds by the Beneficiary related to those reimbursements.

We also determined whether the Beneficiary requested reimbursement for less than the amounts committed by USAC under the selected FRNs. If so, and the amount of unused commitment exceeded \$1,000, we determined whether an FCC Form 500 was completed and filed with USAC.

We selected the Beneficiary's schools identified in Table 3 below for site visits. The number of schools selected for site visits was determined based on the budgeted time to conduct the site visit component of the performance audit, while attempting to achieve the following two objectives: (1) select at least five of the Beneficiary's schools which received services funded by the USF in FY 2002 under the selected FRNs and (2) include schools in our selection which received relatively higher amounts of E-Rate funding and those which received internal connections funding under the selected FRNs, with such bias toward internal connections because we have evaluated the risk of non-compliance for internal connections to be the highest of the service categories.

**TABLE 3: Locations Selected for Site Visits**

Entity Number	School Name
91112	Lotspeich Elementary School
91107	Solomon Ortiz Intermediate School
91104	Robstown High School
91106	Salazar Elementary School
91108	Seale Junior High School

For each site visit, personnel with responsibility for overseeing and/or implementing the technology plan were interviewed. The purpose of the interviews were: (1) to determine that the E-Rate funded products and/or services included in the selected FRNs had been received at the school; and (2) to gain an understanding of the use being made of those products and/or services and how the purchased equipment, if any, is safeguarded. We then determined by observing specific items whether the E-Rate funded products and/or services included in the selected FRNs were installed and operational.

#### *Summary of Audit Findings and Other Matters*

When performing the reimbursement process audit procedures, we identified two audit findings related to uninstalled E-Rate equipment and missing E-Rate equipment, which are reported as Audit Finding Nos. 141604-F-2002-02 and -03 herein. Additionally, we identified five beneficiary-specific other matters related to (1) the lack of security for certain E-Rate equipment, (2) failure to submit a service substitution form to USAC, (3) failure of the Beneficiary to pay certain service provider bills in a timely manner, (4) failure of a service provider to reimburse the Beneficiary in a timely manner, and (5) an FCC Form 500 not being completed by the Beneficiary to adjust excess committed funds, which are reported as Other Matters No. 141604-M-2002-01, through -05 herein.

### **Conclusion; Audit Findings; Other Matters; and Beneficiary and SLD Responses**

In reaching our conclusion on compliance related to the audit procedures performed and the transactions tested during the performance audit, we considered and based that conclusion on the number of audit findings and the monetary effect of such audit findings.

#### **Conclusion**

Based on the audit procedures performed and for the transactions tested, we conclude that the Beneficiary was not compliant with the Rules, as defined in the Objectives and Scope section above, for FY 2002. The results of our auditing procedures disclosed three audit findings related to (1) the Beneficiary not meeting the requirement to have an approved technology budget prior to filing an FCC Form 470 for FY 2002, (2) uninstalled E-Rate equipment and (3) missing E-Rate equipment, which are reported below as Audit Finding Nos. 141604-F-2002-01 through -03.



In addition, the results of our audit procedures disclosed five beneficiary-specific other matters related to (1) the lack of security for certain E-Rate equipment, (2) failure to submit a service substitution form to USAC, (3) failure of the Beneficiary to pay certain service provider bills in a timely manner, (4) failure of a service provider to reimburse the Beneficiary in a timely manner, and (5) an FCC Form 500 not being completed by the Beneficiary to adjust excess committed funds, which are reported below as Other Matters No. 141604-M-2002-01 through -05.

\* \* \* \* \*

**Audit Findings**

***Audit Finding No.***                      ***141604-F-2002-01***

***Condition***                                      The Beneficiary's general budget, which included budgeted amounts for technology, was not approved before submission of its FY 2002 FCC Form 470 in December 2001. The Beneficiary budgeted sufficiently, and obtained approval for its budget that addressed FY 2002; however, the budget was approved in August 2002, eight months after the submission of its FY 2002 FCC Form 470.

***Criteria***    Per FCC Rule 54.504(b)(2)(v), applicable for FY 2002, at the time the Beneficiary submits the FCC Form 470, all of the necessary funding must have been budgeted and approved to pay for its non-discounted portion for the requested assets and services for the funding year.

***Cause***    The budget cycle of the Beneficiary does not lend itself to the timing required by the Rules.

***Effect***    There is no monetary effect from this audit finding, since all non-discounted costs were paid by the Beneficiary to the service providers.

***Recommendation***                              KPMG has no recommendation for the Beneficiary at this time and notes that the above referenced criterion is no longer included in the Rules.

***Beneficiary Response***

The Technology Budget has always included funding for the non-discounted portion of requested E-Rate assets. It is possible that the fiscal year may not be in sync with E-Rate 470 filing.

***SLD Response***

In two places of the application process, the applicant is required to certify to certain information with respect to securing access to the resources necessary to use the services for which discounts are being sought. First, in Item 23 of the FCC Form 470 the applicant acknowledges that it is required to have “all of the resources, including computers, training, software, internal connections, maintenance, and electrical capacity necessary to use the services purchased effectively.” The applicant also certifies “that some of the aforementioned resources are not eligible for support.” Second, in Item 25 of the FCC Form 471, the applicant certifies that it has “secured access, separately or through this program, to all of the resources, including computers, training, software, internal connections, maintenance, and electrical capacity, necessary to use the services purchased effectively. . . . [It] certifies] that the Billed Entity will pay the non-discount portion of the cost of the goods and services to the service provider.”

Funding Year 2002 program rules required that the applicant have the required resources when it filed its FCC Form 470. On August 13, 2004, the FCC changed the rules and modified this requirement in the Fifth Report and Order.<sup>1</sup> The new FCC rule 54.504(b)(2)(vi) states that “[s]upport under this support mechanism is conditional upon the school(s) and library(ies) securing access to all of the resources, including computers, training, software, maintenance, internal connections, and electrical connections necessary to use the services purchased effectively.” Schools and libraries, therefore, are no longer required to have secured access to the necessary resources at the time they file the FCC Form 470.

In the case of the Robstown Independent School District, the fact that it paid its non-discounted share indicates the District had the resources; therefore, no recovery is required. USAC concurs with the audit finding.

<sup>1</sup> See Fifth Report and Order at para. 66.

**Audit Finding No.**

**141604-F-2002-02**

**Condition**

During site visits of the five selected schools, we identified equipment purchased with FY 2002 E-Rate funding that was not installed. The equipment was located either in selected schools or was stored in the Beneficiary's warehouse. Following is a summary of the uninstalled equipment referred to above, all of which was in its original packaging and had not been deployed:

Part Number	Description	Qty	Unit Cost (Non-Discounted) Price	Extended Cost (Non-Discounted) Price	Amount Disbursed by SLD at 90% Discount Rate
SYP8K12RMT-P1	Symmetra RM 8KVA Scalable to 12KVA UPS	2	\$8,222.25	\$16,445	\$14,800
SYRMXR4B4	RM Extended Runtime Battery Cabinet for Symmetra Power Array	4	\$2,435.55	\$ 9,742	\$ 8,768
SU2200RM3U	Smart UPS 2200VA RM-3U 120V	3	\$968.10	\$ 2,904	\$ 2,614
WS-C4006-S2	Catalyst 4000 Chassis (6-Slot), Supervisor II	2	\$7,436.90	\$14,874	\$13,386
SU1400RMXL3U	Smart UPS 1400VA RM-3U 120V	28	\$900.38	\$25,211	\$22,690
<b>Totals</b>				<b>\$69,176</b>	<b>\$62,258</b>

In addition, the service provider billed USAC and the Beneficiary for installation and configuration for the Symmetra RM and Catalyst 4000 equipment identified above. Since the items were not installed, those charges (which totaled \$12,195 at the 90% discount rate) should not have been submitted for reimbursement to SLD.

***Criteria***

Per FCC rules, equipment purchased with E-Rate funds must be installed and operational at the intended site.

***Cause***

We were informed by the Beneficiary that the equipment was not installed due to the lack of available electrical power for the equipment.

***Effect***

The discounted cost of this equipment (\$62,258) and the related installation and configuration charges (\$12,195), totaling \$74,453, are subject to recovery by USAC. The allocation of those costs by FRN is as follows:

FRN 829114	\$17,481
FRN 829185	<u>56,972</u>
<b>Total</b>	<b><u>\$ 74,453</u></b>

***Recommendation***

We recommend that the Beneficiary take measures to assure that E-Rate funded equipment is installed and made operational within the appropriate funding year.

***Beneficiary Response***

Electrical access is currently being provided by the Maintenance Department and installation of E-Rate equipment is in progress. Approximately 70% of the work has been completed.

***SLD Response***

All equipment purchased with Schools and Libraries Program funds must be installed and be operational to service the site(s) referenced on the FCC Form 471. Pursuant to 47 C.F.R. § 54.504(b)(2)(v), the applicant certified on their FCC Form 470 and on Form 471, Block 6, Item 25, that they had sufficient funding to purchase all the resources necessary to make effective use of the eligible services requested in Block 5 of their Form 471. In Funding Year 2002, 47 C.F.R. § 54.504(b)(2)(ii) required applicants to use the services purchased for educational purposes. Additionally, on FCC Form 486, Block 4, Item 9, applicants certify that the services listed on FCC Form 486 have been, are planned to be, or are being provided to all or some of the eligible entities identified in the FCC Form 471 applicant(s) cited. Applicants violate these Rules when they fail to ensure that they are effectively utilizing the services for educational purposes. SLD management concurs with the finding and recommendation, and will seek recovery consistent with FCC Rules and Orders.

***Audit Finding No.***

***141604-F-2002-03***

***Condition***

We compared an asset list provided by the Beneficiary to the equipment at the schools we selected for site visits and we were not able to locate all E-Rate equipment purchased under FRNs Nos. 829114 and 829185 for those schools. The equipment not found is detailed in the following table:

Part Number	Description	Qty	Unit Cost (Non-Discounted) Price	Extended Cost (Non-Discounted) Price	Amount Disbursed by SLD at 90% Discount Rate
WS-G5484	1000Base-SX Short	22	\$ 310.00	\$ 6,820	\$ 6,138
WS-X4608	Catalyst 4603 Redundant Power Unit for WS-P4603	1	\$ 1,112.90	\$ 1,113	\$ 1,002
WS-C3524-PWR-XL-EN	Catalyst 3524-PWR-XL Enterprise Edition	4	\$ 2,476.90	\$ 9,908	\$ 8,917
SYRMXR4 B4	RM Extended Runtime Battery Cabinet for Symmetra Power Array	15	\$ 2,435.55	\$36,533	\$32,880
SU1400R MXL3U	Smart UPS 1400VA RM-3U 120V	6	\$ 900.38	\$ 5,402	\$ 4,862
Totals				\$59,776	\$53,799

**Criteria**

Per FCC rules, equipment purchased with E-Rate funds must be installed and operational at the intended site. Additionally, per USAC Implementing Procedures, beneficiaries are required to properly maintain an asset listings on all the E-Rate equipment purchased.

**Cause**

The Beneficiary did not maintain an adequate asset/inventory control system in place for FY 2002.

***Effect***

The cost of the missing equipment (\$53,799) is subject to recovery by USAC. The allocation of those costs by FRN is as follows:

---

FRN 829114	\$27,016
FRN 829185	<u>26,783</u>
<b>Total</b>	<b><u>\$ 53,799</u></b>

---

***Recommendation***

We recommend that the Beneficiary establish a fixed asset inventory process to properly account for E-Rate equipment and ensure that the Service Provider billed them appropriately. The USAC website provides some guidance in the best practices area (<http://www.sl.universal-service.org/reference/BestPractices.asp>).

***Beneficiary Response***

Robstown ISD will research the best practices and come up with a strategy to account for all E-Rate equipment more accurately.

***SLD Response***

In Funding Year 2002, it was an administrative function, not a program rule requirement, to identify equipment and itemize it by make, model, and quantity. Going forward, the applicant should familiarize themselves with the FCC's Fifth Report and Order,<sup>2</sup> which clarified the record keeping requirements. For further guidance, the applicant should refer to the USAC website, "Schools and Libraries," "Reference Area" under "Demonstrating Compliance with Program Rules," Item #6. The School District indicated they will implement an asset tracking system.

All equipment purchased with E-rate funds must be installed and be operational to service the site(s) referenced on the FCC Form 471. SLD management concurs with the finding, effect, and recommendation and will seek recovery consistent with FCC Rules and Orders.

<sup>2</sup> See Fifth Report and Order at para. 47.

**Other Matters**

***Other Matter No.***                      ***141604-M-2002-01***

---

***Condition***                      During our site visits, we observed that E-Rate funded equipment was not appropriately safeguarded at Robstown High School and Seale Junior High School. Specifically, we noted that equipment located in the gym locker rooms at these schools were not installed in locked cabinets, and unauthorized users could easily gain access to them.

***Criteria***                      E-Rate funded equipment should be maintained in a secure environment.

---

***Cause***                      We were unable to determine the cause of this other matter. Since determining the cause of other matters was not an objective of the performance audit, no further work was performed.

***Effect***                      There is no monetary effect on the Beneficiary as a result of this other matter.

***Recommendation***                      We recommend that the Beneficiary take measures to secure its E-Rate equipment in appropriately designed lockers specially made to house technology equipment. Another option is to make rooms or closets available where the equipment can be made off-limits to unauthorized students and staff by locking the doors and not allowing other storage/access.

***Beneficiary Response***                      Measures are currently being taken to ensure that E-Rate equipment is maintained in a secured environment.

***SLD Response***                      There is no specific Program Rule regarding the maintenance or security of equipment purchased with program funds. SLD will emphasize to the applicants that the equipment should be maintained with reasonable care and in accordance with manufacturer specifications and should be secured. SLD management concurs with this matter and recommendation.



***Other Matter No.***                      ***141604-M-2002-02***

***Condition***                                      Per review of supporting documentation (bills) and a comparison to the Item 21 Attachment, we noted that there ~~were equipment substitutions made during FY 2002;~~ however, there were no equipment substitution forms filed with USAC. Specifically, we noted that 60 Model 1400 APC Smart UPS units were bought instead of the 60 Model 2200 APC Smart UPS units that were requested in the Item 21 Attachment. The substituted units each cost \$67.72 less than the requested and approved units, and appear to be of lesser functionality.

***Criteria***    Per USAC Implementing Guidelines, a substitution authorization must be obtained from SLD prior to any service substitution.

***Cause***    The substitution decision was made because the 2200 APC Smart UPS would not fit into the Rack system purchased by the Beneficiary.

***Effect***    There is no monetary effect of this other matter.

***Recommendation***                              We recommend that the Beneficiary follow USAC's guidelines and obtain substitution authorization from SLD whenever it becomes aware of a possible service substitution.

***Beneficiary Response***                        Robstown ISD is at present adhering to this recommendation and will continue to do so in the future.

***SLD Response***                                      All substituted products were eligible based on the Eligible Services List and the substituted products met the requirements for an eligible service substitution. Therefore, the fact the applicant did not request a service substitution does not warrant recovery.<sup>3</sup> Going forward, the applicant is aware of the procedure to submit a request to SLD for service substitutions. SLD management agrees with the matter and recommendation.

<sup>3</sup> See Fifth Report and Order at para. 23.

***Other Matter No.***                      ***141604-M-2002-03***

***Condition***                                      We reviewed copies of the checks used to pay the service provider bills from Avnet. We determined that those service provider bills were not paid within 30 to 45 days of receipt, which would have been consistent with the Beneficiary's standard procedures. We noted that the Beneficiary paid those invoices 120 days after the bill dates.

***Criteria***    Per USAC implementing guidelines, the Beneficiary must pay its non-discounted portion of the costs in a timely manner and according to its customary payment procedures/term.

***Cause***    We were unable to determine the cause of this other matter. Since determining the cause of other matters was not an objective of the performance audit, no further work was performed.

***Effect***    There is no monetary effect on the Beneficiary as result of this other matter since the service provider bills were ultimately paid by the Beneficiary.

***Recommendation***                              We recommend that the Beneficiary implement procedures to ensure timely payment of invoices related to E-Rate purchases.

***Beneficiary Response***                        Robstown ISD is at present adhering to this recommendation and will continue to do so in the future.

***SLD Response***

In Funding Year 2002, program rules required that an eligible school, library, or consortium must pay the non-discount portion of services or products purchased with Universal Service discounts. There was no requirement as to when the applicant must make payment. Ultimately, this applicant did pay the non-discount portion; therefore, no recovery is required. In the FCC's Fifth Report and Order, the FCC clarified that, "failure to pay more than 90 days after completion of service (which is roughly equivalent to three monthly billing cycles), presumptively violates our rule that the beneficiary must pay its share." SLD management concurs with the matter and recommendation.

***Other Matter No.***

***141604-M-2002-04***

***Condition***

We selected the only FCC Form 472 for the selected FRNs (related to FRN 787057) and examined it to determine whether the service provider had promptly repaid the Beneficiary. The reimbursement to the Beneficiary from Verizon was made 63 days after the date on the Form 472, which exceeded the 30 days prescribed by USAC.

***Criteria***

According to the BEAR Notification Letter, USAC will remit reimbursement to the Service Provider within 20 days of the BEAR Notification Letter. The Service Provider then has 10 additional days to remit reimbursement to the Beneficiary.

***Cause***

We were unable to determine the cause of this other matter. Since determining the cause of other matters was not an objective of the performance audit, no further work was performed.

***Effect***

There is no monetary effect of this other matter since the Beneficiary did receive the amount due to it from the service provider.

---

***Recommendation*** We recommend that the Beneficiary be aware of the USAC guidance on BEAR forms for reimbursement of payment and contact the service provider if payment is not received in a timely manner.

---

***Beneficiary Response.*** Recommendation well taken. We will put this recommendation into effect.

***SLD Response*** In Funding Year 2002, program rules required service providers to reimburse Beneficiaries within 10 days after receipt of such payments from the Administrator. In the FCC's Second Report and Order,<sup>4</sup> the FCC stated that "[s]ervice providers that receive discount reimbursement checks from the Administrator after having received full payment from the billed entity must remit the discount amount to the billed entity no later than 20 business days after receiving the reimbursement check." SLD management concurs with the matter and recommendation.

---

<sup>4</sup> See FCC Second Report and Order at para. 44.

***Other Matter No.*** 141604-M-2002-05

***Condition*** The Beneficiary had an excess of \$426,660 in total committed funds over total expended funds for FY 2002 that were not adjusted in a timely manner, by utilizing FCC Form 500. Total committed funds for E-Rate FY 2002 were \$2,096,475 and total disbursed funds for the same funding year were \$1,669,815.

***Criteria*** Per the FCC Form 500 and related instructions, the Beneficiary should complete an FCC Form 500 to modify any FRN for which funds are not completely expended. By filing an FCC Form 500, the unexpended funds become available so that USAC can reallocate the funds as needed.

***Cause*** The Beneficiary was unaware of the need to file an FCC Form 500.

***Effect*** There is no monetary effect on the Beneficiary as a result of this other matter; however, unused amounts for FY 2002 of \$426,660 could have, potentially, been utilized for other applicants.

---

***Recommendation*** The Beneficiary should file an FCC Form 500 when it determines committed funds will not be used during the funding year to release or cancel the FRNs so that the funds committed could be released and reallocated by USAC as needed.

***Beneficiary Response*** Robstown ISD will consult with USAC to see how we can comply with this recommendation.

***SLD Response*** ~~There is no E-rate program rule requiring applicants to complete FCC Form 500 to report unexpended funds. Through outreach and training, USAC will continue to encourage applicants to complete and submit FCC Form 500 when committed funds are not needed. SLD management concurs with this matter and recommendation.~~

### **Improper Payments**

Based on the audit procedures performed and for the transactions tested for FY 2002, we identified improper payments in the amount of \$128,252 related to Audit Finding Nos. 141604-F-2002-02 and -03.

**APPENDIX 1: Selected FRNs, Related Reimbursement Forms, and Reimbursement Forms Selected for Testing**

				Reimbursement Forms for Selected FRNs		Reimbursement Forms Selected for Testing	
Selected FRNs	SPIN #	Service Provider	Form Type	#	\$\$\$	#	\$\$\$
829114	143007906	Avnet, Inc.	BEAR-472	0	\$ 0	0	\$ 0
			SPI-474	4	619,656	4	619,656
			Total	4	\$ 619,656	4	\$ 619,656
829253	143007906	Avnet, Inc.	BEAR-472	0	\$ 0	0	\$ 0
			SPI-474	1	333,228	0	0
			Total	1	\$ 333,228	0	\$ 0
829185	143007906	Avnet, Inc.	BEAR-472	0	\$ 0	0	\$ 0
			SPI-474	6	285,090	6	285,090
			Total	6	\$ 285,090	6	\$ 285,090
829238	143007906	Avnet, Inc.	BEAR-472	0	\$ 0	0	\$ 0
			SPI-474	1	59,400	0	0
			Total	1	\$ 59,400	0	\$ 0
787057	143004789	Verizon Southwest Incorporated	BEAR-472	1	\$ 56,700	1	\$ 56,700
			SPI-474	0		0	
			Total	1	\$ 56,700	1	\$ 56,700
787122	143007736	Education Service Center-Region 2	BEAR-472	0	\$ 0	0	\$ 0
			SPI-474	1	6,374	0	0
			Total	1	\$ 6,374	0	\$ 0
Totals				14	\$ 1,360,448	11	\$ 961,446